

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN FULTON,)	
)	
Plaintiff,)	
)	20-cv-3118
v.)	
)	Judge Lefkow
ROBERT BARTIK, et al.,)	
)	Jury Trial Demanded
Defendants.)	
<hr style="border: 0.5px solid black;"/>		
ANTHONY MITCHELL,)	
)	
Plaintiff,)	
)	20-cv-3119
v.)	
)	Judge Lefkow
ROBERT BARTIK, et al.,)	
)	Jury Trial Demanded
Defendants.)	

**DEFENDANT CITY OF CHICAGO'S
REPLY IN SUPPORT OF SUMMARY JUDGMENT**

Defendant City of Chicago (the “City”) submits the following reply brief in further support of its motion for summary judgment and asks this Court to grant summary judgment in the City’s favor as to Plaintiffs’ claims for *respondeat superior* and indemnification.

As set forth in the Defendant Officers’ Reply, Plaintiffs cannot succeed on their claims for fabrication of false witness statements (Count II), deprivation of liberty without probable cause (Count III), wrongful conviction and illegal confinement (Count IV),

failure to intervene (Count VI), malicious prosecution (Count IX), intentional infliction of emotional distress (Count X), and civil conspiracy under state law (Count XI) as to any individual Defendant Officer. Because the only remaining claims against the City are vicarious theories of recovery, the City cannot be liable where a Defendant Officer is not. As a result, the Court should grant the City's motion on all claims on which the Defendant Officers are granted summary judgment.

Moreover, Plaintiffs' response fails to account for the fact that *respondeat superior* liability applies only to state law claims, so if Plaintiffs' state law claims are dismissed, the *respondeat superior* claim must be dismissed as well. And municipalities cannot be held liable for constitutional violations under principles of *respondeat superior*. See *Bd. Of Cty. Comm'rs of Bryan Cty v. Brown*, 520 U.S. 397, 405, 415 (1997); *Monell v. Dep't of Social Servs. of the City of New York*, 436 U.S. 658, 691 (1978) ("[A] municipality cannot be held liable under a *respondeat superior* theory."). Thus, even if Count I (false confession) and Count VII (conspiracy) survive, they cannot form the basis for *respondeat superior* liability as plaintiffs argue¹ (Dkt #230 at 36-37) because those claims are based on federal law.

Finally, Plaintiffs do not oppose the dismissal of claims against the Unknown Chicago Police Officers, and the City should be granted summary judgment with respect to any claims alleged against such Unknown Officers.

¹ Plaintiffs are mistaken when they assert that Defendants did not move for summary judgment on the state-law civil conspiracy claim (Count XI). The individual officer defendants did move for summary judgment on Count XI, (Dkt. #202 at 51-53), and if granted, the *respondeat superior* claim against the City based on that underlying claim would also have to be dismissed.

CONCLUSION

For the foregoing reasons, the City respectfully requests that that the Court grant its motion and enter an order: (1) granting summary judgment in its favor on Plaintiffs' *respondeat superior* and indemnification claims in accordance with the Defendant Officers' motion for summary judgment and (2) for any other and further relief this Court deems appropriate.

Dated: December 22, 2023

Respectfully submitted,

MARY B. RICHARDSON-LOWRY, *Corporation*
Counsel for the City of Chicago

/s/ James P. Fieweger

Special Assistant Corporation Counsel

James P. Fieweger

jpfieweger@michaelbest.com

Carolyn E. Isaac

ceisaac@michaelbest.com

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on December 22, 2023, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which caused it to be served this day on all counsel of record who are registered to receive notices of electronic filing generated by the CM/ECF system.

By: /s/ James P. Fieweger
James P. Fieweger
Special Assistant Corporation Counsel

One of the Attorneys for Defendants
City of Chicago